

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-19-0012
RULE 32, RULES OF CRIMINAL)
PROCEDURE)
)
) **FILED 12/12/2019**
)
)
_____)

**ORDER AMENDING RULES 32.2 AND 33.2, ARIZONA RULES OF CRIMINAL
PROCEDURE**

A supplemental petition seeking emergency adoption having been filed proposing to amend 32.2(b) and 33.2(b), Arizona Rules of Criminal Procedure, upon consideration,

IT IS ORDERED that Rules 32.2(b) and 33.2(b), Arizona Rules of Criminal Procedure, be amended on an emergency basis pursuant to Rule 28(h), Rules of the Supreme Court, in accordance with the attachment to this order, effective January 1, 2020.

IT IS FURTHER ORDERED that this matter shall be opened for public comment, in accordance with Rule 28(h)(2), Rules of the Supreme Court. Comments are due January 24, 2020, and any reply due February 7, 2020.

DATED this 12th day of December, 2019.

_____/s/
ROBERT BRUTINEL
Chief Justice

TO:
Rule 28 Distribution
Hon. Joseph C Welty
Katia Mehu
Kent P Volkmer
Linda Maroko
Stacy Reinstein
Elizabeth B Ortiz
Lisa M Panahi
Kay Radwanski
Hon. David L Mackey

ATTACHMENT*

Arizona Rules of Criminal Procedure

Rule 32.2. Preclusion of Remedy

(a) [[[no changes]]]

(b) Claims Not Precluded. Claims for relief based on Rule 32.1(b) through (h) are not subject to preclusion under Rule 32.2(a)(3), but they are subject to preclusion under Rule 32.1(a)(2). However, when a defendant raises a claim that falls under Rule 32.1(b) through (h) in a successive or untimely post-conviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice. At any time, a court may determine by a preponderance of the evidence that an issue is precluded, even if the State does not raise preclusion.

Rule 33.2. Preclusion of Remedy

(a) [[[no changes]]]

(b) Claims Not Precluded.

(1) *Generally.* Claims for relief based on Rule 33.1(b) through (h) are not subject to preclusion under Rule 33.2(a)(3), but they are subject to preclusion under Rule 33.2(a)(2). However, when a defendant raises a claim that falls under Rule 33.1(b) through (h) in a successive or untimely post-conviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner. If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice. At any time, a court may determine by a preponderance of the evidence that an issue is precluded, even if the State does not raise preclusion.

(2) *Ineffective Assistance of Post-Conviction Counsel.* A defendant is not precluded from filing a timely second notice requesting post-conviction relief claiming ineffective assistance of counsel in the first Rule 33 post-conviction proceeding.

* Additions are shown in underline and deletions are in ~~striketrough~~.